

Jeffrey A. Leon, Esq. (CA Bar No. 107070) (Appearing Pro Hac Vice)
LEON & LEON
1970 Broadway, Suite 1250
Oakland, CA 94612
Telephone (510) 208-6600
Facsimile (510) 451-1010
Email: jleon@leonandleon.com

Kirk C. Johnson, Esq. (NV Bar No. 4299)
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Telephone: (775) 329-5600
Facsimile: (775) 348-8300
Email: kirk@nvlawyers.com

Attorneys for Defendants
OWEN H. O'NEIL & SAUNDRA A. O'NEIL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

HERITAGE BANK OF NEVADA,

Plaintiff,

v.

OWEN H. O'NEIL, SAUNDRA A.
O'NEIL, individually and as Trustees of the
OWEN & SAUNDRA O'NEIL 1998
TRUST, and DOES 1-10, inclusive,

Defendants.

Case No. 3:14-cv-00681-LRH-WGC

OBJECTIONS BY DEFENDANTS OWEN
H. & SAUNDRA A. O'NEIL TO
EVIDENCE SUBMITTED BY PLAINTIFF
IN SUPPORT OF ITS MOTION AND IN
OPPOSITION TO DEFENDANTS'
CROSS-MOTION FOR PARTIAL
SUMMARY JUDGMENT

Defendants Owen H. and Sandra A. O'Neil hereby object to the following evidence
submitted by Plaintiff Heritage Bank in support of its Motion for Partial Summary Judgment
and in Opposition to Defendants' Cross-Motion for Partial Summary Judgment:

Affidavit of Alan Rabkin ¶15 (last two sentences) & ¶¶16-19 (Exhibit 10 to Plaintiff's
Reply to Opposition to Plaintiff's Motion For Partial Summary Judgment & Exhibit 4 to
Plaintiff's Opposition to Defendants' Cross-Motion For Partial Summary Judgment) -- This

portion of Mr. Rabkin's Declaration is based solely on an inadmissible (and indeed inaccurate) account of settlement negotiations and should be excluded from consideration on any of three separate grounds: 1) Federal Rule of Evidence 408(a) bars the evidentiary use of any settlement negotiations including settlement offers "to prove or disprove the validity or amount of a disputed claim."; 2) It is irrelevant because the conduct claimed is unrelated to the O'Neil's acquisition of their easement rights. *See Tiffany Design, Inc. v. Reno-Tahoe Specialty, Inc.*, 56 F.Supp.2d 1113, 1123 (D. Nev. 1999); *Gravelle v. Burchett*, 319 P.2d 140, 144-45 (Nev. 1957); and 3) Federal Rule of Evidence 403 bars the consideration of evidence where its probative value if any is substantially outweighed by its unfair prejudice. *See* Pages 22-23 of Defendant's Cross-Motion For Summary Judgment for further discussion of these objections.

Affidavit of Stanley Wilmoth ¶¶3-4 (Exhibit 11 to Plaintiff's Reply to Opposition to Plaintiff's Motion For Partial Summary Judgment & Exhibit 7 to Plaintiff's Opposition to Defendants' Cross-Motion For Partial Summary Judgment) -- Same three grounds for objections as set forth above for the specified portion of the Rabkin Affidavit.

Respectfully submitted this 24th day of July 2015.

LEON & LEON

ROBERTSON, JOHNSON, MILLER &
WILLIAMSON

/ s / Jeffrey A. Leon

By: Jeffrey A. Leon
Attorneys for Defendants OWEN H. O'NEIL &
SAUNDRA A. O'NEIL

CERTIFICATE OF SERVICE

Heritage Bank of Nevada v. Owen H. O'Neil et al., Case No. 3:14-cv-00681-LRH-WGC

Pursuant to FRCP 5(b) and Local Rule 5-4, I certify that I am an employee of Leon & Leon, in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within entitled cause. My business address is 1970 Broadway, Suite 1250, Oakland, California 94612.

I further certify that on **July 24, 2015**, I electronically filed the foregoing
 OBJECTIONS BY DEFENDANTS OWEN H. & SAUNDRA A. O'NEIL TO EVIDENCE
 SUBMITTED BY PLAINTIFF IN SUPPORT OF ITS MOTION AND IN OPPOSITION TO
 DEFENDANTS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT
 and thereby caused a copy of such document to be served by electronic mail on the interested
 party(ies) in said cause, as Filing Users of the Court's ECF system as set forth below:

Mark G. Simons, Esq. (SBN 5131) Robison, Belaustegui, Sharp & Low 71 Washington Street Reno, NV 89503 msimons@rbsllaw.com	Attorneys for Plaintiff Heritage Bank of Nevada
--	--

I certify that I am employed in the office of a member of the bar of this court at whose direction the service was made on **July 24, 2015**.

/s/ Dara Tuell